





STATE OF WASHINGTON

OFFICE OF THE INTERAGENCY COMMITTEE
1111 Washington Street SE
PO Box 40917
Olympia, WA 98504-0917

February 2, 2006

TO: Interagency Committee Board Members or Designees

FROM: Laura Eckert Johnson, Director 

PREPARED BY: Neil Aaland, Assistant Director 
Jim Eychaner, Planner

SUBJECT: Policy Review: Compliance and Conversion

Your *Strategic Plan 2007-11 (Office of the Interagency Committee)* calls for the IAC Board to consider new and existing policy recommendations. Staff believes that addressing policies on project compliance and conversion is one of the highest priorities for Board consideration.

Background

Since 1964, the State of Washington, through the IAC, and more recently the Salmon Recovery Funding Board (SRFB), has been investing tens of millions of public dollars in the recreation, open space, and habitat estate. The investment has been made with the expectation that a return, in the form of continuous recreation opportunity or continuous habitat function, will be realized in perpetuity.¹ A converted project is a serious matter involving the loss of public return on a public investment that often requires Board action for resolution.

¹ The IAC's "organic act," now 79A.25.100, reads: "... land with respect to which money has been expended under RCW 79A.25.080 shall not, without the approval of the committee, be converted to uses other than those for which such expenditure was originally approved. The committee shall only approve any such conversion upon conditions which will assure the substitution of other... land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location."



Increasingly over time, and especially in the past half decade, grant managers have experienced increasing numbers of converted projects. While hard numbers on project conversions are lacking and difficult to generate, management of the resolution required for a conversion is time consuming and expensive for all concerned.

Reasons for the increase in the conversion workload are probably related to increasing pressure on available public land,

- documented growth in participation both in terms of per capita participation and types of participation,
- lack of sponsors' institutional memory and the tools required to improve institutional memory,
- lack of IAC/SRFB resources needed to 100% inspect or otherwise track the status of literally thousands of projects statewide,
- and an occasional lack of incentive to report and/or resolve a conversion issue.

Staff is convinced that conversion questions and challenges will increase in number and in complexity, just as competing interests for access to or use of land and water continue to grow in numbers and complexity. We believe a review of our non-compliance and conversion policy is timely and well worth an investment of agency resources.

Staff Work on the Compliance and Conversion Issue

IAC/SRFB staff has been reviewing conversion issues for several months. In the course of this review, we have come to realize that the public investment may be more tenuous than we have assumed. Key findings leading to this tentative conclusion include the following.

There is inconsistency among IAC/SRFB grant programs. IAC manages nine (9) grant programs broadly separated into federal pass-through and state-funded. With a few exceptions, conversion policies are similar but different enough to have high potential for inconsistent interpretation and action. The differences create confusion, especially with our clients. SRFB has adopted many IAC policies related to compliance and conversion, and there is high potential for inconsistent interpretation and action between IAC and SRFB staff sharing the same program manuals.

There is uncertainty whether application of conversion status applies to land versus structures or facilities. Most likely because of stringent federal requirements under the Land and Water Conservation Fund (LWCF) program, conversion policies seem to cover both land and facilities in the same manner. IAC/SRFB staff believes that there is a need to have policies that differentiate between conversion of an investment in land and

conversion of an investment in a structure or facility. Land stays in place and is relatively permanent in nature; most structures and facilities are not permanent.

Detection or discovery of conversions is problematic. Conversions come to our attention through 1) contacts from clients seeking permission to make a change, 2) discovery in the field during compliance inspections, and 3) third party discovery – for example, when a public works department approaches a parks department for permission to widen a road. Field and third party discovery tend to be after-the-fact, and are more difficult to deal with than client contact.

We need to ensure we are using appropriate contracts and project agreement documents. Staff has had early discussion with the agency assistant attorney general (AAG) concerning improvements to our contracts. We acknowledge that more work needs to be done in this area.

Some of our clients have poor institutional memory. Clients may or may not be aware of the restrictions contained in project agreements. In some instances, of course, there may be selective memory or willful disregard. IAC/SRFB has lacked the capacity to consistently “remind” all sponsors of agreement obligations.

We do not have a complete set of management tools. For years, IAC and later SRFB lacked the mapping tools needed to identify exact project boundaries. A land acquisition of several hundred or even thousands of acres is represented in PRISM by a single point. The ability to track areas and boundaries (polygon) is a key tool that helps both IAC/SRFB and sponsors to understand exactly what property is covered – or not – by a grant agreement.

To address these issues, staff has done the following:

- Secured an appropriation of state funds to pay for adding a boundary mapping (polygon) capability to PRISM;
- Conducted small group meetings and grant staff workshops to review our current policies, definitions, and procedures to develop internal consistency on compliance and conversion issues;
- Met with the agency’s assistant attorney general to discuss contract documents; and
- Written a discussion draft of possible text that could be used as a stand-alone policy document or as changes to Manual 7, Section 3. The discussion draft text tries to clarify definitions and procedures, and introduces some new concepts.

Staff recommendation

IAC/SRFB staff recommends that the Board approve staff's request to conduct sponsor and public outreach on the compliance/conversion issue. The outreach would focus on policies and procedures introduced in Manual 7, Section 3. To start the dialogue, staff is working on a series of concepts, some of which are simply clarification of current practices and others of which are new concepts that need full exploration with interested clients and the public.

Highlights of the concepts under consideration include:

- Improved definitions: that is, what we mean by compliance versus degrees of non-compliance from minor element change to conversion.
- Recognition of the need for reasonable public involvement.
- Recognition of the logic that "perpetuity" may be more relevant to an interest in real property than in a structure or facility.
- Clarity concerning procedures about deciding when non-compliance or conversion issues may be resolved at the staff level, at the Director level, or at the Board level.
- Review of practices used by other states, for example an administrative fee for processing a conversion request.²
- Introduction of the concept of consequences for unresolved compliance issues.

In the public work, we propose to:

- Ask for a citizen member of the IAC and a citizen member of the SRFB to join a small working group of affected sponsors and interested "stakeholders,"
- Review issues and direction with the working group,
- Take working group consensus to a broader public through a series of meetings (workshops, focus groups),
- Develop and circulate draft proposals, and
- Develop a final set of recommended policies and procedures to be implemented by revision of appropriate documents including Manual 7.

The recommended policies and procedures would be brought to the IAC and the SRFB for review and decision. Staff estimates that the work could be accomplished this calendar year.

² The State of Idaho charges a fee based on a percentage of the appraised price of the converted parcel.